

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-0889-WQ-E TCEQ ID: RN103099156 CASE NO.: 33746
RESPONDENT NAME: City of Plano

Page 1 of 2

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: City of Plano collection system, located at the intersection of Custer Road and George Bush Turnpike, Plano, Collin County</p> <p>TYPE OF OPERATION: Collection system</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There are two additional pending enforcement actions regarding this facility location, Docket Nos. 2007-1337-WQ-E and 2007-1644-WQ-E.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on May 12, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: Ms. Melissa Keller, SEP Coordinator, Enforcement Division, MC 219, (512) 239-1768 TCEQ Enforcement Coordinator: Ms. Cheryl Thompson, Enforcement Division, Enforcement Team 3, MC R-04, (817) 588-5886; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Jimmy Foster, Director of Public Works, City of Plano, P.O. Box 860358, Plano, Texas 75086 Mr. Thomas H. Muehlenbeck, City Manager, City of Plano, P.O. Box 860358, Plano, Texas 75086 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: January 19, 2007</p> <p>Date of NOV/NOE Relating to this Case: March 28, 2007 (NOE)</p> <p>Background Facts: This was a routine investigation of violations which resulted in a fish kill.</p> <p>WATER</p> <p>1) Failed to prevent the unauthorized discharge of wastewater into water in the state [TEX. WATER CODE § 26.121(a)].</p> <p>2) Failed to provide notification of a spill to local government officials, the news media and the TCEQ regional office within 24 hours after becoming aware of the discharge [TEX. WATER CODE § 26.039(b) and 30 TEX. ADMIN. CODE § 319.302(c) and (d)].</p>	<p>Total Assessed: \$27,000</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$27,000</p> <p>Total Paid (Due) to General Revenue: \$0</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> <p>Findings Orders Justification: Environmental receptors have been exposed to pollutants which exceed levels that are protective.</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent returned to full compliance on January 20, 2007 in regard to the unauthorized discharge and reporting violations. In addition, the Respondent is currently conducting a three-phased project to evaluate and rehabilitate the collection system.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A)</p>

Additional ID No(s): Utilities Registration 20070

Attachment A
Docket Number: 2007-0889-WQ-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Plano
Payable Penalty Amount:	Twenty-Seven Thousand Dollars (\$27,000)
SEP Amount:	Twenty-Seven Thousand Dollars (\$27,000)
Type of SEP:	Pre-approved
Third-Party Recipient:	Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")- Wastewater Treatment Assistance
Location of SEP:	Collin County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to provide low income rural homeowners with assistance to enable the repair or replacement of their failing on-site wastewater systems. SEP monies will be used to pay for the labor and materials costs related to repairing or replacing the failing systems. The recipients will not be charged for the cost of replacing or repairing the failing systems.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by protecting water sources for drinking, recreation, and wildlife from contamination from failing treatment systems

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc.
1716 Briarcrest Drive, Suite 510
Bryan, Texas 77802-2700

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Texas Commission on Environmental Quality
Financial Administration Division, Revenues
Attention: Cashier, MC 214
P.O. Box 13088
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision May 25, 2007

TCEQ

DATES

Assigned
PCW2-Apr-2007
6-Jun-2007

Screening

26-Apr-2007

EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent

City of Plano

Reg. Ent. Ref. No.

RN103099156

Facility/Site Region

4-Dallas/Fort Worth

Major/Minor Source

Minor

CASE INFORMATION

Enf./Case ID No.

33746

Docket No.

2007-0889-WQ-E

Media Program(s)

Water Quality

Multi-Media

No. of Violations

2

Order Type

Findings

Enf. Coordinator

Laurie Eaves

EC's Team

EnforcementTeam 1

Admin. Penalty \$ Limit Minimum

\$0

Maximum

\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1

\$36,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History

0% Enhancement

Subtotals 2, 3, & 7

\$0

Notes

No previous compliance history.

Culpability

No

0% Enhancement

Subtotal 4

\$0

Notes

The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply

25% Reduction

Subtotal 5

\$9,000

Before NOV

NOV to EDPRP/Settlement Offer

Extraordinary

Ordinary

N/A

X

(mark with x)

Notes

The Respondent returned to compliance on January 20, 2007.

Total EB Amounts

\$24

Approx. Cost of Compliance

\$25,100

0% Enhancement*

*Capped at the Total EB \$ Amount

Subtotal 6

\$0

SUM OF SUBTOTALS 1-7

Final Subtotal

\$27,000

OTHER FACTORS AS JUSTICE MAY REQUIRE

Adjustment

\$0

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount

\$27,000

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty

\$27,000

DEFERRAL

0%

Reduction

Adjustment

\$0

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

No deferral is recommended for Findings Orders.

PAYABLE PENALTY

\$27,000

Screening Date 26-Apr-2007

Docket No. 2007-0889-WQ-E

PCW

Respondent City of Plano

Policy Revision 2 (September 2002)

Case ID No. 33746

PCW Revision May 25, 2007

Reg. Ent. Reference No. RN103099156

Media [Statute] Water Quality

Enf. Coordinator Laurie Eaves

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

No previous compliance history.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 26-Apr-2007		Docket No. 2007-0889-WQ-E		PCW																
Respondent City of Plano		<i>Policy Revision 2 (September 2002)</i>																		
Case ID No. 33746		<i>PCW Revision May 25, 2007</i>																		
Reg. Ent. Reference No. RN103099156																				
Media [Statute] Water Quality																				
Enf. Coordinator Laurie Eaves																				
Violation Number	<input type="text" value="1"/>																			
Rule Cite(s)	<input type="text" value="Tex. Water Code § 26.121(a)"/>																			
Violation Description	<p>Failed to prevent the unauthorized discharge of wastewater into water in the state, as documented during an inspection conducted on January 19, 2007. Specifically, a collection system line failure occurred on January 13, 2007 near the intersection of Custer Road and the George Bush Turnpike discharging approximately four to five million gallons of raw wastewater. Pittman and White Rock creeks were impacted. Approximately 12 dead fish were documented in a Pittman Creek pond.</p>																			
Base Penalty				<input type="text" value="\$10,000"/>																
>> Environmental, Property and Human Health Matrix																				
OR	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <td colspan="3" style="text-align: center;">Harm</td> </tr> <tr> <td style="text-align: center;">Release</td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> </tr> <tr> <td style="text-align: center;">Actual</td> <td style="text-align: center;"><input type="text" value="x"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> <tr> <td style="text-align: center;">Potential</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table>					Harm			Release	Major	Moderate	Minor	Actual	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
		Harm																		
	Release	Major	Moderate	Minor																
Actual	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>																	
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>																	
Percent <input type="text" value="50%"/>																				
>> Programmatic Matrix																				
OR	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> </tr> <tr> <td style="text-align: center;">Falsification</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table>					Major	Moderate	Minor	Falsification	<input type="text"/>	<input type="text"/>	<input type="text"/>								
		Major	Moderate	Minor																
	Falsification	<input type="text"/>	<input type="text"/>	<input type="text"/>																
Percent <input type="text" value="0%"/>																				
Matrix Notes	<input type="text" value="Human health or the environment has been exposed to pollutants which exceed protective levels as a result of this violation."/>																			
Adjustment				<input type="text" value="\$5,000"/>																
				<input type="text" value="\$5,000"/>																
Violation Events																				
Number of Violation Events		<input type="text" value="7"/>	Number of violation days																	
<i>mark only one with an x</i>	daily	<input type="text" value="x"/>	Violation Base Penalty <input type="text" value="\$35,000"/>																	
	monthly	<input type="text"/>																		
	quarterly	<input type="text"/>																		
	semiannual	<input type="text"/>																		
	annual	<input type="text"/>																		
	single event	<input type="text"/>																		
<input type="text" value="Seven daily events are recommended from the date the discharge began on January 13, 2007 through the date of compliance on January 20, 2007."/>																				
Economic Benefit (EB) for this violation			Statutory Limit Test																	
Estimated EB Amount		<input type="text" value="\$24"/>	Violation Final Penalty Total <input type="text" value="\$26,250"/>																	
This violation Final Assessed Penalty (adjusted for limits)			<input type="text" value="\$26,250"/>																	

Economic Benefit Worksheet

Respondent: City of Plano
Case ID No.: 33746
Reg. Ent. Reference No.: RN103099156
Media: Water Quality
Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$25,000	13-Jan-2007	20-Jan-2007	0.0	\$24	n/a	\$24

Notes for DELAYED costs

Estimated cost to replace 420 feet of line and clean/disinfect the affected areas. Date required is the date the discharge began. Final Date is the date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$25,000

TOTAL

\$24

Screening Date	26-Apr-2007	Docket No.	2007-0889-WQ-E	PCW
Respondent	City of Plano	Policy Revision 2 (September 2002)		
Case ID No.	33746	PCW Revision May 25, 2007		
Reg. Ent. Reference No.	RN103099156			
Media [Statute]	Water Quality			
Enf. Coordinator	Laurie Eaves			
Violation Number	2			
Rule Cite(s)	Tex. Water Code § 26.039(b) and 30 Tex. Admin. Code § 319.302(c) and (d)			
Violation Description	Failed to provide notification of a spill to local government officials, the news media and the TCEQ regional office within 24 hours after becoming aware of the discharge which began on January 13, 2007, as documented during an inspection conducted on January 19, 2007. The TCEQ regional office was notified orally on January 15, 2007 and the local government officials and news media were notified on January 18, 2007.			
Base Penalty				\$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm					
	Release	Major	Moderate	Minor		
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>		
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent	<input type="text" value="0%"/>

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	
	Percent				<input type="text" value="10%"/>

Matrix Notes

100% of the requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events	<input type="text" value="1"/>	<input type="text" value="5"/>	Number of violation days
----------------------------	--------------------------------	--------------------------------	--------------------------

mark only one with an x	daily	<input type="text"/>	
	monthly	<input type="text"/>	
	quarterly	<input type="text"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
	single event	<input type="text" value="x"/>	

One single event is recommended for the violation.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$0"/>	Violation Final Penalty Total <input type="text" value="\$750"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$750"/>	

Economic Benefit Worksheet**Respondent** City of Plano**Case ID No.** 33746**Reg. Ent. Reference No.** RN103099156**Media** Water Quality**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System	\$100	13-Jan-2007	18-Jan-2007	0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost associated with notifying local officials, media and the TCEQ. Date required is the date the discharge began. Final Date is the date of compliance.

Avoided Costs**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs**Approx. Cost of Compliance**

\$100

TOTAL

\$0

Compliance History

Customer/Respondent/Owner-Operator:	CN600352488	City of Plano	Classification: AVERAGE	Rating: 2.90
Regulated Entity:	RN103099156	CITY OF PLANO	Classification:	Site Rating:
ID Number(s):	UTILITIES	REGISTRATION	20070	
Location:	1520 AVENUE K, PLANO, TX, 75074			
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	April 01, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	June 06, 2002 to June 06, 2007			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Cheryl Thompson	Phone:	(817)588-5886	

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 03/28/2007 (554306)
N/A
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A
- I. Participation in a voluntary pollution reduction program.
N/A
- J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING THE
CITY OF PLANO
RN103099156**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-0889-WQ-E

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Plano ("the City") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the City presented this agreement to the Commission.

The City understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the City agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon Plano.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The City owns and operates a collection system in Plano, Collin County, Texas, with a line located at the intersection of Custer Road and George Bush Turnpike (the "Facility").

2. The City has discharged wastewater into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. During an investigation conducted on January 19, 2007, TCEQ staff documented an unauthorized discharge of four to five million gallons of raw wastewater which began on January 13, 2007 from a collection system line into water in the state due to a line failure. Pittman and White Rock creeks were impacted. Approximately 12 dead fish were documented in a Pittman Creek pond.
4. During an investigation conducted on January 19, 2007, TCEQ staff documented notification of a spill was not provided to local government officials, the news media and the TCEQ regional office within 24 hours after becoming aware of the discharge which began on January 13, 2007. The TCEQ regional office was notified orally on January 15, 2007 and local government officials and the news media were notified on January 18, 2007.
5. The City received notice of the violations on April 3, 2007.
6. The Executive Director recognizes that the City returned to full compliance on January 20, 2007 in regard to the unauthorized discharge and reporting violations. In addition, the City is currently conducting a three-phased project to evaluate and rehabilitate the collection system.

II. CONCLUSIONS OF LAW

1. The City is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the City failed to prevent the unauthorized discharge of wastewater into water in the state, in violation of TEX. WATER CODE § 26.121(a).
3. As evidenced by Findings of Fact No. 4, the City failed to provide notification of a spill to local government officials, the news media and the TCEQ regional office within 24 hours after becoming aware of the discharge, in violation of TEX. WATER CODE § 26.039(b) and 30 TEX. ADMIN. CODE § 319.302(c) and (d).
4. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the City for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
5. An administrative penalty in the amount of Twenty-Seven Thousand Dollars (\$27,000) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX WATER CODE § 6.053. Twenty-Seven Thousand Dollars (\$27,000) shall be conditionally offset by the City's completion of a Supplemental Environmental Project.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The City is assessed an administrative penalty in the amount of Twenty-Seven Thousand Dollars (\$27,000) as set forth in Section II, Paragraph 5 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the City's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Plano, Docket No. 2007-0889-WQ-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The City shall implement and complete a Supplemental Environmental Project ("SEP") in accordance with TEX. WATER CODE § 7.067. As set forth in Section II Paragraph 5 above, Twenty-Seven Thousand Dollars (\$27,000) of the assessed administrative penalty shall be offset with the condition that the City implement the SEP defined in Attachment A, incorporated herein by reference. The City's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. If the City fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the City's failure to comply is not a violation of this Agreed Order. The City shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The City shall notify the Executive Director within seven days after the City becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the City shall be made in writing to the Executive Director. Extensions are not effective until the City receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. The provisions of this Agreed Order shall apply to and be binding upon the City. The City is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the City if the Executive Director determines that the City has not complied with one or more of the terms or conditions in this Agreed Order.
7. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
8. This Agreed Order, issued by the Commission, shall not be admissible against the City in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
9. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
10. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

5/11/2008

Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of the City of Plano. I am authorized to agree to the attached Agreed Order on behalf of the City of Plano, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, the City of Plano waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

5/18/08

Date

THOMAS H. MUEHLENBECK

Name (Printed or typed)
Authorized Representative of the
City of Plano

CITY MANAGER

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

Attachment A
Docket Number: 2007-0889-WQ-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Plano
Payable Penalty Amount:	Twenty-Seven Thousand Dollars (\$27,000)
SEP Amount:	Twenty-Seven Thousand Dollars (\$27,000)
Type of SEP:	Pre-approved
Third-Party Recipient:	Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")- Wastewater Treatment Assistance
Location of SEP:	Collin County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to provide low income rural homeowners with assistance to enable the repair or replacement of their failing on-site wastewater systems. SEP monies will be used to pay for the labor and materials costs related to repairing or replacing the failing systems. The recipients will not be charged for the cost of replacing or repairing the failing systems.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by protecting water sources for drinking, recreation, and wildlife from contamination from failing treatment systems

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc.
1716 Briarcrest Drive, Suite 510
Bryan, Texas 77802-2700

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Texas Commission on Environmental Quality
Financial Administration Division, Revenues
Attention: Cashier, MC 214
P.O. Box 13088
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

1. The first part of the document is a letter from the President of the United States to the Congress, dated January 3, 1862.

2. The second part is a report from the Secretary of the Treasury, dated January 3, 1862.

3. The third part is a report from the Secretary of the Interior, dated January 3, 1862.

4. The fourth part is a report from the Secretary of the Navy, dated January 3, 1862.

5. The fifth part is a report from the Secretary of the War, dated January 3, 1862.

6. The sixth part is a report from the Secretary of the State, dated January 3, 1862.

7. The seventh part is a report from the Secretary of the War, dated January 3, 1862.

8. The eighth part is a report from the Secretary of the Navy, dated January 3, 1862.

9. The ninth part is a report from the Secretary of the War, dated January 3, 1862.

10. The tenth part is a report from the Secretary of the Navy, dated January 3, 1862.

11. The eleventh part is a report from the Secretary of the War, dated January 3, 1862.

12. The twelfth part is a report from the Secretary of the Navy, dated January 3, 1862.

13. The thirteenth part is a report from the Secretary of the War, dated January 3, 1862.

14. The fourteenth part is a report from the Secretary of the Navy, dated January 3, 1862.

15. The fifteenth part is a report from the Secretary of the War, dated January 3, 1862.

16. The sixteenth part is a report from the Secretary of the Navy, dated January 3, 1862.

17. The seventeenth part is a report from the Secretary of the War, dated January 3, 1862.

18. The eighteenth part is a report from the Secretary of the Navy, dated January 3, 1862.

19. The nineteenth part is a report from the Secretary of the War, dated January 3, 1862.

20. The twentieth part is a report from the Secretary of the Navy, dated January 3, 1862.

21. The twenty-first part is a report from the Secretary of the War, dated January 3, 1862.

22. The twenty-second part is a report from the Secretary of the Navy, dated January 3, 1862.

23. The twenty-third part is a report from the Secretary of the War, dated January 3, 1862.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

